

HB 464
Written Testimony
February 8, 2007
House Judiciary Committee

Respectfully Submitted by:
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Madame Chair, members of the committee, for the record my name is Amy Minto. I represent Attorneys Liability Protection Society, a Montana domestic insurer that provides professional liability insurance for lawyers in 27 states and 3 US territories.

We oppose HB 464 on the basis that it will open the floodgates of litigation against insurance companies and add fuel to the litigious fire that is driving up the cost of insurance in this state.

This bill dramatically lowers the threshold for emotional distress in bad-faith claims. If this bill becomes law, any insured or third-party claimant who does not get everything they want or expect from an insurer, who simply feels disappointment, has a legitimate claim under law to sue, and a reasonable expectation of an award of damages. This flies in the face of what the supreme courts of Montana have held. The seminal case on emotional distress damages in Montana is Sacco v. High Country Independent Press, Inc. where the Supreme Court held that the standard for cause of action for emotional distress is "serious or severe emotional distress" that was the "reasonably foreseeable consequence of the defendant's negligent or intentional act or omission." Quite frankly chagrin, disappointment, and/or worry hardly seem to meet that threshold.

Another provision of the bill to which we object is that it allows for punitive damages without stating a standard for their application. Punitive damages should only be awarded where the insurer demonstrates actual malice or intent. It is entirely possible that a claim might fall through the cracks and while that insurer could be held responsible for violating the Unfair Claims Practices Act, in the absence of malice they should not be subject to punitive damages.

Finally, we object to the bill providing for the payment of attorneys fees associated with the underlying case. Many cases are taken by attorneys on a contingent fee basis and the resulting fee, based on the value of the underlying award, is the same whether or not the insurer acted in bad faith. The attorney's fees are thus not tied to the claim of bad-faith, and should not be an eligible award.

Thank you.